

EXHIBIT A

1 UNITED STATES DISTRICT COURT

2 FOR THE

3 DISTRICT OF MASSACHUSETTS

4 LEXINGTON INSURANCE COMPANY)

5 AND NATIONAL UNION FIRE)

6 INSURANCE COMPANY OF) No. 04-11109 RGS

7 PITTSBURGH,)

8 Plaintiffs,)

9 vs.)

10 VIRGINIA SURETY COMPANY,)

11 INC.,)

12 Defendant.)

COPY

13 The deposition of JOHN GORING, called for
14 examination, taken pursuant to the Federal Rules of
15 Civil Procedure of the United States District Courts
16 pertaining to the taking of depositions, taken
17 before JENNIFER L. BERNIER, CSR No. 84-4190, a
18 Notary Public within and for the County of Cook,
19 State of Illinois, and a Certified Shorthand
20 Reporter of said state, at Suite 800, 200 East
21 Randolph Street, Chicago, Illinois, on the 14th day
22 of July, A.D. 2006, at 10:58 a.m.

23

24 Job No. 191493B

1 A. We can.

2 MR. STEPHAN: I'm sorry. I don't mean to
3 interrupt.

4 Can we agree to Endorsement 27 so that
5 we're consistent with the term that we used in
6 Mr. Baliga's deposition?

7 BY MR. MASELEK:

8 Q. Would you agree with that, sir?

9 A. That's fine.

10 Q. You said that you were familiar with that
11 form?

12 A. I am.

13 Q. Give me one moment.

14 If you look at the first page of the
15 endorsement, under the heading, "Supplementary
16 Payments-Coverages," after the seventh item, it
17 reads, "These payments will reduce the limits of
18 insurance," correct?

19 A. Yes.

20 Q. To your understanding, what is the intent
21 of adding this endorsement to the policy?

22 MR. STEPHAN: Objection.

23 BY THE WITNESS:

24 A. That would amend the general liability

1 coverage part to include those seven things within
2 the limits.

3 BY MR. MASELEK:

4 Q. Okay. So if this form were made part of
5 an NPS program policy, for that policy, defense
6 costs would erode the limits of insurance; is that
7 correct?

8 A. That's what this form would say, yes.

9 Q. To your knowledge, was this form used on
10 any NPS program policies?

11 A. It was not used.

12 Q. It was not used by NPS, correct?

13 A. It was not used by NPS, nor Virginia
14 Surety in their role after NPS went away.

15 Q. Okay. So to your knowledge, all of the
16 NPS program policies -- whether issued by NPS or
17 Virginia Surety, itself -- excluded defense costs
18 from the limit of liability?

19 MR. STEPHAN: Objection. You're referring to
20 the policies written on Virginia Surety paper?

21 MR. MASELEK: Both. Yes, I'm sorry. Yes.

22 BY THE WITNESS:

23 A. Well, you asked it in sort of a
24 roundabout way.

1 I would answer you by saying this form
2 was not part of any of the NPS policies, either
3 issued in New Jersey or in Fort Wayne.

4 BY MR. MASELEK:

5 Q. And are you aware of any other forms that
6 may have been endorsed to any NPS program policies
7 issued, on behalf of Virginia Surety, that would
8 have made defense costs be included within the limit
9 of liability?

10 A. There were none to my knowledge.

11 Q. Okay. To your knowledge, did the
12 Virginia Surety policies provide first-dollar
13 defense coverage?

14 A. First-dollar defense coverage?

15 Q. Do you know what I mean by that?

16 A. Why don't you explain that?

17 Q. To your knowledge, were there any
18 deductibles or self-insured retentions issued to any
19 insureds by NPS under the program?

20 A. You're sort of asking a different
21 question now.

22 Q. Yes. Actually, I did.

23 A. With respect to the Virginia Surety
24 policies, there were no deductibles or self-insured

1 retentions.

2 Now, obviously, I am aware that there
3 were AIG policies written that had that, but not
4 Virginia Surety policies.

5 Q. Right. And unless I indicate otherwise
6 today, if I refer to "the program policies," I'm
7 only referring to the ones issued on behalf of
8 Virginia Surety.

9 A. Okay.

10 Q. Do you know if NPS issued any policies on
11 behalf of National Union?

12 A. I don't know if NPS issued them or they
13 were issued by National Union. I know that there
14 were such things. Who actually issued them, I'm not
15 aware of.

16 Q. Okay. To your knowledge, was
17 Endorsement 27 approved for use in any states?

18 A. To my knowledge, it was not; and,
19 therefore, it was not used.

20 Q. I guess, to your knowledge, do you have
21 an understanding as to why Endorsement 27 was not
22 used?

23 A. Because it was not approved by the
24 states.

1 Q. Okay. Are you aware that, in this
2 litigation, Virginia Surety is taking the position
3 that, once defense costs or indemnity payments equal
4 \$250,000, that it has no further obligation to pay
5 any expenses above that amount?

6 MR. STEPHAN: Objection.

7 BY THE WITNESS:

8 A. I'm sort of, basically, aware of what the
9 disagreement is. But I can't speak to the details
10 of what Virginia Surety's exact position is on this.

11 MR. MASELEK: Give me a moment. I think I'm
12 done.

13 MR. STEPHAN: Absolutely. No problem.

14 (WHEREUPON, a recess was had.)

15 (WHEREUPON, a certain document was
16 marked Goring Deposition Exhibit
17 No. 7, for identification, as of
18 07/14/06.)

19 BY MR. MASELEK:

20 Q. Mr. Goring, I'd ask you to take a look at
21 Exhibit 7, which is another compilation exhibit of
22 some different documents.

23 A. Okay.

24 Q. In your review of the NPS program files,

1 you've seen documents similar to this?

2 A. Yes.

3 Q. And as to the first document, do you know
4 who Art Cucuzzella was?

5 A. He was an NPS account exec, or an
6 employee of some kind.

7 Q. Okay. And this first document purports
8 to be an interoffice memorandum from Mr. Cucuzzella
9 to a Wes at Barclay Program Services?

10 A. Mm-hmm.

11 Q. Do you know who Barclay Program Services
12 was?

13 A. That's a more difficult question than it
14 might seem, because -- in some respects -- they were
15 a broker just like many brokers that did business
16 with NPS. But there was something more to it than
17 that.

18 They were actually in the same building
19 as NPS. And I think they had some greater
20 relationship than the normal broker. I couldn't
21 tell you what that was, but that's what it seemed.

22 Q. It seemed based upon your review of the
23 documents?

24 A. Based upon the fact that they were in the

Page 70

1 building -- and I don't even know how I remember
2 this. But, supposedly, they had the same computer
3 system or something.

4 Q. If you look under the "Subject" heading,
5 it indicates, presumably, for an insured,
6 "B.P. Slavitt, GL Virginia Surety," and then a
7 policy number, and, "XSGI National Union," with a
8 policy number, correct?

9 A. That's what it says.

10 Q. Okay. If you look at the second page, it
11 purports to be an interoffice memo from a Patty to
12 "Art C.," which, I presume, is Art Cucuzzella.

13 Do you know who Patty was?

14 A. Patty King was a NPS employee.

15 Q. Okay. And in this document, am I correct
16 that Ms. King writes, "We bound the primary GL with
17 Virginia Surety, excess GL with Lexington, an
18 umbrella with American Guarantee & Liability
19 Insurance Co." Is that correct?

20 A. That's what it says.

21 Q. If you could, turn to the next page,
22 please.

23 This document purports to be a facsimile
24 from Mr. Gruppuso to an individual from Alliance

1 Brokerage Corp.; is that correct?

2 A. Yes.

3 Q. And in this facsimile, Mr. Gruppuso
4 writes:

5 "Thank you for your payment with regards
6 to the 'primary' liability coverage for the
7 above-captioned account. As discussed, your check
8 did not include payment for the 'excess' liability
9 and the non-owned and hired auto coverage."

10 Correct? Did I read that correctly?

11 A. You did.

12 Q. And the next line indicates, "Our records
13 show that a balance of, approximately, 146,000 is
14 still due for this account."

15 Is that correct?

16 A. Yes.

17 Q. Did I ready that correctly?

18 And then there is a handwritten note from
19 a "Sally." Do you know of a Sally that was involved
20 with NPS?

21 A. That may have been Sally Martin that we
22 talked about before, an Aon Service Center person
23 that was involved with the NPS program.

24 Q. Okay. And she writes, "This is the

1 amount due for Lexington on Selective policies only,
2 not VSC's." Is that correct?

3 A. That's what it says.

4 Q. Okay.

5 A. I don't know how she would know that.

6 But if there's any other Sally, I don't know who it
7 is.

8 Q. Okay. And if you look at that facsimile,
9 it's dated April 22nd, 2002, correct?

10 A. Yes.

11 Q. And do you know the date that the
12 managing general agency agreement was terminated?

13 A. Not exactly; but it was, approximately,
14 the first week of May of 2002. I'm pretty sure.

15 Q. Okay. So in any event, this facsimile
16 was sent a week or two before?

17 A. The demise of NPS, apparently so, yes.

18 Q. Okay. And do you have two more pages to
19 the exhibit that you have?

20 A. One more.

21 MR. MASELEK: Do you have an objection if I
22 added this?

23 MR. STEPHAN: No.

24 MR. MASELEK: Thanks.

1 BY MR. MASELEK:

2 Q. Take a moment to review the documents
3 that are Bates Stamped VSCU/W 004859 and 4860.

4 A. Okay.

5 Q. Do you see this appears to be a
6 "Certificate of Liability Insurance Form," correct?

7 A. Evidently.

8 Q. Would these certificates typically be
9 created by the broker?

10 A. I think so. If it was something NPS
11 would have done on a regular basis, I would
12 recognize that. And this was not.

13 So I would agree with your assertion that
14 this is, probably, done by, what, "LHH," I guess --
15 or "HRH," excuse me.

16 Q. And if you look under the "Coverages
17 provided," under "Category A," there is a box
18 checked for "Commercial General Liability," correct?

19 A. Right.

20 Q. And then, in the next column over, under
21 "Policy Number," there is a, "Policy
22 No. IPGA 7000000010003."

23 A. Isn't that a terrific policy number.

24 Q. Now, in your experience, is that a policy

1 number that would conform with the NPS program?

2 A. That would be a Virginia Surety policy
3 number for the NPS program.

4 Q. And if you look over to the right, under
5 "Limits," it says it has limits of 250,000 per
6 occurrence; is that correct?

7 A. Right.

8 Q. And above that, under "Company A," it
9 says, "Virginia Surety Insurance Co." Is that
10 correct?

11 A. It does.

12 Q. And under "Policy Number," it also says,
13 "See attached for additional GL coverages." Is that
14 true?

15 A. Yes.

16 Q. Okay. And the next page --

17 A. So that would be this, apparently.

18 Q. Right. That document refers to the
19 National Union policy as excess general liability
20 coverages; is that true?

21 A. That's what it says.

22 Q. For an insured NHP Foundation?

23 A. Yes.

24 Q. You can just attach that to the rest of



INTEROFFICE MEMORANDUM

NATIONAL
PROGRAM
SERVICES
INCORPORATED

TO: BARCLAY PROGRAM SERVICES

ATT: WES

FROM: ART CUCUZZELLA

SUBJECT: B.P. SLAVITT

GL VIRGINIA SURETY IPGA7000000060032

XSGL NATIONAL UNION 1073202060032

UNBRELLA AMERICAN GUARANTEE & LIABILITY

AUO359778200137060003A

AUTO SELECTIVE S1323569060032

301 IRVINE TURNER BLVD

DATE: 04/19/02

Wes,

Enclosed are your copies of binders and invoices for the deletion of the above captioned location.

If any questions please advise.

Thanks,

Art

Total # of pages: 10

240 Cedar Knolls Rd.
P.O. Box 0388
Cedar Knolls, NJ
07927-0388
Tel 973.267.4242
Fax 973.285.9190

Goring DEP. EX. NO. 7
FOR ID., AS OF 7/14/02

VSCU/W 000019

INTEROFFICE MEMO

DATE: JANUARY 3, 2002

TO: ART C.

FROM: PATTY

RE: COVERED BRIDGE CONDO ASSOCIATION
BOUND - 12/31/01

ART:

HERE IS A NEW BUSINESS ACCOUNT AS BOUND EFFECTIVE 12/31/01.

**WE BOUND THE PRIMARY GL WITH VIRGINIA SURETY, EXCESS GL
WITH LEXINGTON, AND UMBRELLA WITH AMERICAN GUARANTEE &
LIABILITY INS. CO. WE DID NOT WRITE THE HIRED / NON-OWNED AUTO.**

PER ROB'S E-MAIL DATED TODAY, WE CANNOT USE ANY OF THE PRIOR
BINDING SPECIFICATIONS FOR THE LEXINGTON THAT ARE IN THE SYSTEM
UNTIL WE ARE ADVISED.

THE FOLLOWING ITEMS ARE OUTSTANDING:

- INSPECTION REPORT - IT HAS BEEN ORDERED WITH A DUE DATE OF
1/23/02.
- COMPLETED LEAD QUESTIONNAIRE.

REVIEW THE FILE AND LET ME KNOW IF YOU HAVE ANY QUESTIONS.

THANKS,
PATTY

VSCU/W 003754

NATIONAL PROGRAM SERVICES, INC.
240 Cedar Knolls Road; PO Box 388
Cedar Knolls, NJ 07927-388
Tel: (973)267-4242 Fax: (973)285-9190

FACSIMILE

TO: Mr. Michael Vescovo
Alliance Brokerage Corp.

FROM: Mr. Vito B. Gruppuso
National Program Services, Inc.

DATE: April 22, 2002

RE: *BASSIN BROTHERS*
~~Bassin Brothers~~, Inc.
Commercial General Liability

*Policy #
IPGA7-30067
3/22/02*

Dear Mike:

Thank you for your payment with regards to the 'primary' liability coverage for the above captioned account.

As discussed, your check did not include payment for the 'excess' liability and the non-owned and hired auto coverage.

Our records show that a balance of \$146,830 is still due for this account. Kindly advise.

Very truly yours,
National Program Services, Inc.

Vito
Vito B. Gruppuso, CPIA, CIC
President

*This is the amt due for
Lexington and Selective
policies only, not VSC. Sally*

THE INFORMATION CONTAINED HEREIN IS TAKEN FROM OUR RECORDS OR FROM DATA SUPPLIED TO US BY OTHERS. IT IS
TO THE BEST OF OUR KNOWLEDGE AND ABILITY REFLECTIVE OF THE DATA THAT HAS BEEN REQUESTED.

OF PAGES INCLUDING COVER 1

VSCUW 000169

2

ACORD CERTIFICATE OF LIABILITY INSURANCE						DATE (MM/DD/YY) 5/30/02	
PRODUCER Hilb, Rogal & Hamilton Co. 700 King Farm Blvd., #125 Rockville, MD 20850 (301) 948-2422				THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. COMPANIES AFFORDING COVERAGE			
INSURED Piedmont Affordable Housing Inc/The NHP Foundation 1090 Vermont Avenue, #400 Washington, DC 20005				COMPANY A Virginia Surety Ins Co COMPANY B Amer. Guarantee & Liab Ins Co COMPANY C COMPANY D			
COVERAGES THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.							
CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS		
A	GENERAL LIABILITY	IPGA 7000000010003 See attached for additional GL coverages	1/31/01	1/31/04	GENERAL AGGREGATE \$		
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				PRODUCTS - COMP/OP AGG \$		
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				PERSONAL & ADV INJURY \$ 250000		
	<input type="checkbox"/> OWNER'S & CONTRACTOR'S PROT				EACH OCCURRENCE \$ 250000		
					FIRE DAMAGE (Any one fire) \$ 50000		
					MED EXP (Any one person) \$		
	AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT \$		
	<input type="checkbox"/> ANY AUTO				BODILY INJURY (Per person) \$		
	<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident) \$		
	<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE \$		
	<input type="checkbox"/> HIRED AUTOS						
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT \$		
	<input type="checkbox"/> ANY AUTO				OTHER THAN AUTO ONLY:		
					EACH ACCIDENT \$		
					AGGREGATE \$		
B	EXCESS LIABILITY	AU035977820101003	2/28/02	1/31/03	EACH OCCURRENCE \$ 50000000		
	<input checked="" type="checkbox"/> UMBRELLA FORM				AGGREGATE \$ 50000000		
	<input type="checkbox"/> OTHER THAN UMBRELLA FORM						
WORKERS COMPENSATION AND EMPLOYERS' LIABILITY					WC STATUTORY LIMITS OTH-ER		
THE PROPRIETOR/PARTNERS/EXECUTIVE OFFICERS ARE: <input type="checkbox"/> INCL <input type="checkbox"/> EXCL					EL EACH ACCIDENT \$		
					EL DISEASE - POLICY LIMIT \$		
					EL DISEASE - EA EMPLOYEE \$		
OTHER							
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS Re: Brook Valley, 640 DeAnna Lane, Charlotte, NC 28217. Certificate Holder is listed as Additional Insured for General Liability only.							
CERTIFICATE HOLDER Corcoran Jennison Management 150 Mt. Vernon St., #520 Boston, MA 02125				CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE <i>Joseph A. Colletta</i>			

NHP FOUNDATION

***THIS ATTACHMENT IS PART OF THE CERTIFICATE OF INSURANCE FORM
FOR THE ABOVE REFERENCED INSURED:***

Excess General Liability Coverages

**National Union Fire Insurance Company
Policy # 0151131010003
1/31/01 to 1/31/04**

**\$1,000,000 Per Occurrence
\$2,000,000 General Aggregate**

VSCU/W 004860